

## **Standing Orders**

Once the answer is filed, the Court sends out a notice of status conference. All dates are set by the scheduling order at that status conference. In most RICO cases, the Court requires the completion of a RICO case statement.

## **Conferences**

The Court schedules a status conference within approximately two weeks after the answer is filed. At the status conference, the Court establishes dates for motion cutoff, discovery cutoff, witness list deadline, final pretrial conference, and trial. Under unusual circumstances, or upon special request by an out-of-town counsel, a status or pretrial conference may be conducted by telephone. Other conferences regarding special problems or a settlement conference may be scheduled upon request.

## **Removal**

The Court does not typically hold oral argument on motions to remand. If a motion to remand has not been filed and the Court has a concern regarding the propriety of removal, the Court will issue an order to show cause and give the parties an opportunity to address the issue.

## Motion Practice

The Court schedules motions hearings. The hearing is usually scheduled within four weeks after the response to the motion is filed.

The Court will accept reply briefs provided they are timely filed pursuant to [E.D. Mich. LR 7.1\(d\)](#). Parties are encouraged to present a proposed order at the hearing. The Court requires strict compliance with [E.D. Mich. LR 7.1\(a\)](#) but does not generally [E.D. Mich. LR 7.1\(d\)](#) if counsel has a valid reason for not being able to comply. Depending upon the frequency of the requests by counsel and the complexity of the case, the Court may permit a brief longer than twenty pages pursuant to [E.D. Mich. LR 7.1\(c\)\(3\)\(A\)](#).

# Temporary Restraining Orders and Injunctions

If necessary, the Court will set a time schedule for motion and briefing requirements relating to requests for temporary restraining orders and preliminary injunctions which is less than prescribed by [E.D. Mich. LR 7.1](#). In addition to the requirements of [E.D. Mich. LR 65.1](#), the Court requires that all temporary restraining orders, including those considered *ex parte*, require some notice to the opposing party and an opportunity for the Court to hear both sides unless the moving party can demonstrate good cause for failing to give notice to the opposing party.

# Discovery Matters

The scheduling order sets forth:

1. The time for filing witness lists (which are to be exchanged at least 30 days prior to the close of discovery);
2. The discovery cutoff dates.

Discovery motions are sometimes referred to the Magistrate Judge. The Court expects counsel to resolve discovery matters themselves. If the Court is unnecessarily involved in a discovery dispute, costs will be assessed against the unsuccessful party. Discovery cutoff dates can be extended by mutual agreement of counsel provided it does not affect the final pretrial or the trial dates. The Court will convene a conference for scheduling discovery under Fed.R.Civ.P. 26(f) upon informal request of the parties. Generally, the Court allows four to six months for discovery and requires, if possible, disclosure of all witnesses, including experts, one to two months prior to discovery cutoff. The Court has had occasion to strike interrogatories served by the parties that exceed the authorized number. The parties may stipulate to conducting more than 10 depositions. The Court adheres strictly to the requirements of [E.D. Mich. LR 37.1](#) concerning "narrowing areas of disagreement" and will hear no discovery motions unless the parties have conferred regarding their discovery disputes.

# Mediation

The Court refers all civil diversity cases to mediation pursuant to [E.D. Mich. LR 16.3](#) if the parties stipulate to be bound by the mediation sanctions set forth in the Michigan Rules of Court 2.403. The Court generally refers cases to mediation after the discovery cutoff. The Court also utilizes other types of alternative dispute resolution techniques, where appropriate, such as arbitration or special mediation panels.

# Pretrial

The Court adheres to the requirements of [E.D. Mich. LR 16.2](#) regarding the joint final pretrial order. The joint final pretrial order is due at the final pretrial conference as set forth in the initial scheduling order. The Court requires the parties to list in the joint final pretrial order the witnesses they expect to call at trial. Any witness that is not named will not be allowed to testify at trial, absent a showing of good cause. The final pretrial conference is usually held two to four weeks before trial. The pretrial conference must be attended by an attorney familiar with the case.



# Settlement

A settlement conference, at which the parties or representatives with authority to settle must be present, is usually held in jury cases shortly before trial is expected to commence. The Court routinely becomes involved in settlement negotiations in jury cases and will refer a non-jury matter to a Magistrate Judge or another Judge for settlement conference.

# **Trials**

The Court uses a two-month trailing docket. The Court will allow adjournments of a trial date only upon extenuating circumstances. Upon learning of a conflict in trial dates, the attorney should immediately call the Court Clerk and explain the situation. The Court will generally not require another member of an attorney's firm to handle the trial in the event of a conflict.

All exhibits must be listed in the joint final pretrial order and exchanged prior to trial. At the pretrial conference, each party will be assigned the numbers to be used for exhibits. Parties are encouraged to use a bench book of exhibits in non-jury cases. During trial, the Court Reporter retains custody of the exhibits. After trial pending appeal, the parties retain custody of the exhibits.

The Court encourages the exchange of trial briefs prior to trial. All motions *in limine* are to be incorporated into the joint final pretrial order and raised at the conference.

Motions in limine must be filed PRIOR to the pretrial conference unless basis for the motion is unknown at that time. Motions *in limine* are generally scheduled to be heard, if possible, prior to trial. If counsel becomes aware of the need for a motion *in limine* after the pretrial conference, opposing counsel and the Court should be notified immediately so that such a motion can be resolved before the trial date.

## **a. Non-Jury Trials**

Proposed findings of fact and conclusions of law are to be submitted at the conclusion of trial.

## **b. Jury Trials**

The Court may use the standard method or the strike method of jury selection. The Court will permit counsel a limited participation in the voir dire at the conclusion of the Court's questions. Specific requests for voir dire questions must be submitted in writing to the Court. The Court handles the exercise of challenges in such a manner that the jurors know which party has excused them (unless the strike method is used).

## **c. Miscellaneous**

The Court generally conducts trials between the hours of 9:00 a.m. and 1:00 p.m. The Court will, however, conduct trials in the afternoon if the schedule permits. The Court does not require counsel to request permission to approach a witness, but does prefer that counsel request permission to approach the bench.

Multiple counsel may not interrogate the same witness; however, counsel who gave the opening statement need not give the closing argument. The Court usually finds it unnecessary to impose limitations on opening and closing arguments or any other time limitations during trial. During the course of trial, the Court prefers that counsel use the podium when conducting witness examinations and arguments.

## **d. Jury Instructions**

Jurors are allowed to take the instructions to the jury room during deliberation. Depending on the circumstances, jurors may be permitted to take notes during a trial. Counsel should make every effort to agree on jury instructions and to submit to the Court a joint set of agreed upon jury instructions.



## Pleas and Sentencing

The Court will accept an *Alford* plea, depending upon the circumstances, sometimes over a Government objection. The Court will accept a *nolo contendere* plea.

Prior to sentencing, the Court requires a presentence investigation and report unless it is a corporate defendant, and then it is handled on a case-by-case basis. Disputes between the Government and defense counsel relating to the computation of sentencing guidelines are resolved by hearing prior to or at sentencing. If there is a dispute with respect to the computation of sentencing guidelines with the probation officer, the Court notifies the parties of the tentative conclusion and will make a final determination at sentencing. The Court does not typically meet with the probation officer prior to sentencing unless the Court has a question about the presentence report.

The Court will accept a Rule 11 plea agreement, but will reserve its decision as to whether to abide by that agreement. The Court will then refer the matter to probation for a presentence report and may then reject the agreement. If the Court decides to reject a Rule 11 plea agreement, it will inform the parties in open court, but will do so on the sentencing date unless the parties request otherwise. If, after reviewing the presentence report, the Court believes the sentence should be greater than the Rule 11 agreement, the defendant may withdraw the plea. The Court does not have a firm plea cutoff date. Typically, the Court will permit a convicted individual to self-report to the custodial facility.

# Criminal Trials

The Court does not require submission of briefs in criminal trials, but does require submission of witness lists from the Government. Such witnesses are then disclosed to the jury during voir dire. The Court encourages the Government to provide *Jencks* material in advance of a witness testifying. In multi-defendant criminal trials, the Court does not have a set procedure, but handles such trials as the circumstances warrant. The Court will allot defendants some amount in excess of ten challenges depending upon the situation. In a very unusual situation, the Court would permit jury questionnaires to be submitted to the venire in advance of jury selection. Attorneys may exercise multiple peremptory challenges, and the Court alternates between Government and defense attorneys for opportunity to exercise. If all attorneys pass, a jury has been selected. Disputes between the Government and defense counsel regarding proposed jury instructions are resolved in chambers then, if necessary, on the record. The Court follows the same procedures relative to jury selection in criminal trials as in civil trials. Generally, the Court permits bench conferences during trial, depending upon the circumstances.

## **Criminal Pretrial**

The Court follows the cutoff dates provided in the standing order, and enforces the standing order's discovery and motion cutoff dates unless the parties stipulate otherwise. The Court schedules a pretrial conference in multi-defendant cases or at the request of the parties.

# Case Management Orders

In order to view and print the order(s), Adobe Acrobat Reader is required. To download Adobe Acrobat [click here](#).

- [Scheduling Order](#)

# Policy on Use of Electronic Devices by Counsel in Courtroom

The Court adheres strictly to the requirements of [E.D. Mich. LR 83.31](#). In particular, subsections (c) through (j).

In addition:

1. The use of personally-owned electronic devices (such as laptop and tablet computers) is limited to counsel.
2. **Internet access is strictly prohibited in the courtroom.**
3. Written notices specifically listing all electronic devices and equipment for courtroom presentation must be directed by counsel to the U.S. Marshal via electronic correspondence to Judge Duggan's Judicial Assistant at least 48 hours before hearing date.
4. The Court does not provide power cords or power strips.



